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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/314,251	05/18/99	HODGES	A MEMTEC.06301

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KNOBBE MARTENS OLSON & BEAR LLP  
620 NEWPORT CENTER DRIVE  
SIXTEENTH FLOOR  
NEWPORT BEACH CA 92660

EXAMINER

NOGUEROLA, A

ART UNIT

PAPER NUMBER

1743

DATE MAILED:

10/08/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/314,251

Applicant(s)

Hodges et al.

Examiner

Alex Noguerola

Group Art Unit  
1743



☒ Responsive to communication(s) filed on May 18, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-8 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-8 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☒ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☒ None of the CERTIFIED copies of the priority documents have been  
☒ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made

2. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hanagan et al. (US 5,520,787) in view of Diebold (US 5,437,999).

Addressing claim 1. Hanagan et al. teach all of applicant's limitations except for a notch in at least one of the edges, "wherein the notch is in communication with the cell and allows entry of the liquid sample into the cell". See the abstract and Figures 1 and 3. In Hanagan et al., however, there is an opening (element 300 in Fig. 3) which is in communication with the cell and allows entry of the liquid sample into the cell.

As for the notch, as noted above Hanagan et al. teach an opening, however in is in the top layer not in a lateral edge. Placing a notch in a lateral edge "wherein the notch is in communication with the cell and allows entry of the liquid sample into the cell" is known in the art as shown by Diebold et al., for example. See Fig. 6. It would have been obvious to one with ordinary skill in the

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art at the time the invention was made to locate the notch so that it will it most conveniently and efficiently contact the sample source.

Addressing claim 2. Hanagan et al. teach an outlet port (element 310 in Fig. 3; and col. 8, ln. 57-58). Diebold et al. teach a vent port (col. 8, ln. 37-43). Although neither Hanagan et al. or Diebold et al. indicate that the outlet (or vent) is “adapted to allow air to escape the cell to facilitate entry into cell by the liquid sample” this feature is inherent in the design of the notch, cell , and vent of Hanagan et al. Clearly as sample enters the notch it will displace air through the outlet (vent).

Addressing claim 3. See in Diebold et al. col. 8, ln. 37-52.

Addressing claims 4-7. See col. 5, ln. 20-64.

3. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hanagan et al. (US 5,520,787) in view of Diebold (US 5,437,999) as applied to claims 1-7 above, and further in view of Gunasingham (US 5,312,590). Hanagan et al. do not mention ferricyanide; however, they do they an embodiment using glucose oxidase (col. 9, ln. 53-54). It is known in the art to use ferricyanide in combination with glucose oxidase. See for example col. 2, ln. 10-24 in Gunasingham.

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It would have been obvious to one with ordinary skill in the art at the time the invention was made to use ferricyanide as taught by Gunasingham in the invention of Hanagan et al. in view of Diebold et al. because as indicated by Gunasingham ferricyanide will serve as an "electron shuttle between the reactive center of the enzyme and the electrode" (col. 2, ln. 10-12).


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Noguerola whose telephone number is (703)-305-5686.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden, can be reached at (703)-308-4037. The unofficial fax phone number, for example, for faxing a proposed amendment, for this Group is (703)-305-7719. The official fax phone number, for example, for faxing an amendment to be entered, for this Group is (703)-305-7718.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)-308-0651.

  
Alex Noguerola

October 1, 1999

  
T. TUNG  
PRIMARY PATENT EXAMINER  
ART UNIT-112 1743